THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.3823 of 2002

Date: 06-02-2007.

Between :

Everett (India) Pvt. Ltd., Visakhapatnam,
rep. by its Director & another.

.....Petitioners

And

Commissioner of Customs, Visakhapatnam &
Others.

.....Respondents.

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.3823 of 2002

ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

The petitioners were informed that they had executed an undertaking on 07.06.2000 to pay any amount of duty/fine/penalty that may be levied in connection with the seizure of 15 Kgs. Gold from the crew member Mr.Tun Min Oo of MV Chin Shwe Haw on 02.06.2000. Then they were further informed that Mr.Tun Min Oo was undergoing imprisonment and had not paid penalty of rupees five lakhs, which was imposed on him and since the petitioners had given an undertaking, they were requested to make the payment, failing which, action under Section 142 of the Customs Act, 1962 could be initiated. This notice has been challenged in this writ petition mainly on the ground that before enforcing the alleged undertaking, no hearing was given to the petitioners.

In page 5 of the counter-affidavit, in reply to para 16 of the writ petition, it has been stated,

> *"The letter dated 25.1.02 of the respondents in the nature of a Show Cause Notice and the action proposed therein was not initiated. The petitioners would have replied to the letter and would have asked for an opportunity to make a representation which they never did. In the circumstances, enforcement of the bond is the only opportunity left before the respondents which is not illegal as claimed by the petitioners."*

In view of this stand taken by the respondents, we hold that the letter dated 25.01.2002 was only a show cause notice and the petitioners would be at liberty to file a reply to it within two weeks from today and the respondents may thereafter consider it and pass appropriate orders. The writ petition is accordingly disposed of.

It is submitted that by virtue of this Court's order dated 01.03.2002, Rs.2.5 lakhs were deposited and a bank guarantee was given for Rs.2.5 lakhs. The amount deposited by virtue of this Court order shall be refunded immediately to the petitioners and the bank guarantee shall stand

discharged.

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BILAL NAZKI, J

6th February 2007.

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NOOTY
RAMAMOHANA RAO, J

N.B:
Furnish copy of order in two days.

(b/o)
ajr